

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIRLA PALMA,

No. C-08-4780 MMC

Plaintiff,

**ORDER DISMISSING SECOND  
AMENDED COMPLAINT; DIRECTING  
CLERK TO CLOSE CASE**

v.

HOMEcomings, et. al.,

Defendants

By order filed December 8, 2008, the Court directed plaintiff Mirla Palma to show cause why her initial complaint should not be dismissed for failure to state a claim upon which relief could be granted. On December 11, 2008, plaintiff responded to said order by filing a First Amended Complaint ("FAC"). Because it appeared that the FAC also failed to state a claim upon which relief could be granted, the Court, by order filed December 18, 2008, directed plaintiff to show cause why the FAC should not be dismissed. In so directing plaintiff, the Court noted that if plaintiff intended to response by amending again, plaintiff was required to first file a motion to amend.

On December 23, 2008, plaintiff, in response to the Court's December 18, 2008 order, filed a Second Amended Complaint ("SAC") and did not file a motion to amend. Accordingly, the SAC is procedurally deficient and is subject to being stricken. The Court, however, will exercise its discretion to consider the SAC on the merits, in the interests of

1 judicial economy. Having read and considered the SAC, the Court rules as follows.

2 In its December 18, 2008 order, the Court identified deficiencies in each of plaintiff's  
3 causes of action. The SAC fails to cure any of the previously-identified deficiencies, and,  
4 consequently, constitutes an insufficient response to the Court's December 18, 2008 order  
5 to show cause. Indeed, the SAC contains additional deficiencies, in that the SAC, unlike  
6 the FAC, fails to include any purported causes of action; rather, the SAC consists entirely of  
7 conclusions of law and quotes from federal statutes, and is wholly devoid of factual  
8 allegations.

9 Consequently, plaintiff has again failed to state a claim upon which relief can be  
10 granted. Further, there is no indication that affording plaintiff a third opportunity to amend  
11 would result in plaintiff's stating a claim upon which relief could be granted.

12 Accordingly, the SAC is hereby DISMISSED for failure to state a claim, and the  
13 Clerk is directed to close the case.

14 Finally, to the extent plaintiff has included within the SAC a request for issuance of a  
15 temporary restraining order, the request is DENIED, plaintiff having failed to show any  
16 likelihood of success on the merits of her claims.

17 **IT IS SO ORDERED.**

18  
19 Dated: December 29, 2008

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MAXINE M. CHESNEY  
United States District Judge